

CONSOLIDATION COAL CO.
CHEVRON COAL DEVELOPMENT CO.

IBLA 84-635

Decided April 10, 1985

Appeal from a decision of the Montana State Office, Bureau of Land Management, overruling objections to the readjustment of coal lease M-46292.

Affirmed.

1. Coal Leases and Permits: Leases--Coal Leases and Permits:
Readjustment -- Mineral Leasing Act: Generally

Pursuant to 30 U.S.C. § 207(a) (1982) and 43 CFR Subpart 3451, the Secretary is vested with broad discretionary authority to readjust every term or condition of a coal lease. A lessee of a pre-Federal Coal Leasing Amendments Act lease has no vested rights to the indefinite continuation of existing lease terms.

2. Coal Leases and Permits: Leases--Coal Leases and Permits:
Readjustment--Mineral Leasing Act: Generally

Where a notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, such notice satisfies the statutory requirements, and the Bureau of Land Management may subsequently provide the specific terms of conditions for readjustment.

3. Coal Leases and Permits: Leases--Coal Leases and Permits: Readjustment--Mineral
Leasing Act: Generally

The Federal Coal Leasing Amendments Act, 30 U.S.C. §§ 201-209 (1982), governs the terms and conditions that the Department may impose upon readjustment of leases issued prior to the Act.

4. Coal Leases and Permits: Leases--Coal Leases and Permits: Readjustment--Mineral
Leasing Act: Generally

A decision by the Bureau of Land Management to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation, or where such provisions are in accordance with proper administration of the public lands.

APPEARANCES: Brian E. McGee, Esq., Denver, Colorado, for appellants; William J. Barnhouse, Esq., Englewood, Colorado, for Consolidation Coal Company; John G. Turner, Esq., San Francisco, California, for Chevron Coal Development Company.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Consolidation Coal Company (Consol) and Chevron Coal Development Company (Chevron) (hereinafter jointly referred to as appellants) have appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated May 8, 1984, which dismissed appellants' protest of the imposition of readjusted terms and conditions on coal lease M-46292. Consol and Chevron each own an undivided 50 percent interest in the subject lease.

On March 1, 1964, Rosebud Coal Sales Company received lease M-061686 for 1,198.16 acres of land located in Big Horn County, Montana, pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 207 (1982). Effective May 1, 1980, BLM approved partial assignment to Consol of the record title interest in 674.40 acres of lease M-061686. A new serial number, M-46292, was assigned to the 674.40-acre lease. 1/

At the time the original lease was issued, section 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1958), provided:

Leases shall be for indeterminate periods upon condition * * * that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods.

Section 7 of the Mineral Leasing Act of 1920 was amended by section 6 of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), 30 U.S.C. § 207(a) (1982), to read in pertinent part as follows: "Such rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended."

Moreover, section 3 of the lease provides:

The lessor expressly reserves * * *:

* * * * *

(d) Readjustment of terms. The right reasonably to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period.

1/ Effective Aug. 1, 1982, BLM approved assignment to Chevron of an undivided 50 percent interest in M-46292.

On October 25, 1983, over 5 months prior to the end of the 20-year period, BLM issued notice of the terms of the lease as readjusted effective March 1, 1984, pursuant to 43 CFR 3451 and as provided in section 3(d) of the lease. The notice provided in part that: (1) Two areas of critical wildlife winter range were identified and declared unsuitable, (2) the new rental rate of \$ 3 per acre and the new royalty rate of 12.5 percent was to become effective on March 1, 1984, (3) the present coal lease bond of \$ 10,000 was adequate, and (4) the terms and conditions of the readjusted lease 2/ would be considered acceptable to lessees unless within 60 days from receipt of the notice, they filed objections to the new terms or conditions, or relinquished the lease.

On December 29, 1983, appellants filed with BLM a protest to the proposed readjustment. Appellants' protest consisted of the following "general objections":

Lessee asserts that any prospective readjustment is subject to and must be effectuated in accordance with (i) the provisions of the MLLA [Mineral Lands Leasing Act of 1920] as codified when M-46292 was issued, (ii) the current provisions of M-46292, (iii) the regulations which were in effect upon the issuance of M-46292, and (iv) the doctrine of "ejusdem generis." In addition, any such readjustment cannot summarily ignore the express provisions of M-46292, and, as such, would not be subject to (a) the provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), (b) regulations which were purportedly promulgated pursuant to FLPMA, (c) regulations which are not premised upon any statutory authority, and (d) general guidelines and internal policy.

If the readjustment process is not premised upon the foregoing concepts, Lessee asserts that any purported readjustment of M-46292 would constitute a taking of Lessee's property rights without due process and would violate Lessee's rights under the Fifth Amendment of the United States Constitution.

The protest then went on to detail numerous "specific objections."

On May 8, 1984, BLM issued a decision dismissing appellants' objections to the readjusted lease terms. As a basis for its decision, BLM relied upon section 3(d) of the lease, section 7 of the Mineral Leasing Act, as amended by section 6 of FCLAA, and Solicitor's Opinion, 88 I.D. 1003 (1981) (whether leases issued prior to August 4, 1976, subject to readjustment after that date must be readjusted to conform to FCLAA). BLM went on to address each of appellants' specific objections.

In their statement of reasons for appeal, appellants set forth the following "statement of issues" to be addressed on appeal:

A. Whether the Secretary is barred by statute and by the contractual provisions of the Lease from readjusting the terms and conditions of the Lease?

2/ The Oct. 25, 1983, notice to appellants attached a copy of the proposed readjusted lease.

B. Whether the provisions of the Federal Coal Leasing Amendments Act of 1976 (FCLAA) are only prospective in nature and in their application to Federal coal leases?

C. Whether the readjustment of a Federal coal lease effectuates the termination of the original lease and the issuance of a new lease?

D. Whether the purported readjustment of the Lease (i) breaches Lessee's contractual rights, (ii) is factually unsupported, and/or (iii) is arbitrary, capricious and an abuse of discretion? Statement of Reasons at 3-4.

Appellants argue on appeal that the Secretary is barred by statute and by the contractual provisions of the lease from readjusting the terms and conditions of the lease because the Secretary failed to render a decision with respect to the final terms and conditions by the end of the initial 20-year period. Appellants submit that the provisions of FCLAA were intended to be prospective in nature and were not intended to be applied to pre-FCLAA leases. Appellants contend that the readjustment of a coal lease constitutes a continuation of the original lease, as amended pursuant to the readjusted terms and conditions, and that it does not effectuate the termination of the original lease and the issuance of a "new" lease between the parties. As such, appellants submit that the abrogation of and failure to consider appellants' current contractual rights pursuant to the readjustment process is arbitrary, capricious, and an abuse of discretion. Appellants further argue that the readjustment of the specific terms and conditions of the lease (1) constitutes a breach of their contractual rights, (2) is factually unsupported, (3) is arbitrary, capricious, and an abuse of discretion. 3/

[1] Before addressing appellants' specific contentions, it is helpful to make some observations on the Department's authority to readjust a coal lease. As indicated, section 3(d) of the subject lease expressly reserved the right to readjust the terms and conditions of the lease. The authority for section 3(d) was established by 30 U.S.C. § 207 (1958). Also, Departmental regulations specifically authorize readjustment of the lease. 43 CFR Subpart 3451. In Rosebud Coal Sales Co. v. Andrus, 657 F.2d 949, 951 (10th Cir. 1982), the Tenth Circuit Court noted:

This [section 3 of the lease] provides a right to the government in the nature of an option to make adjustments it considers necessary

3/ After generally stating their objections to the readjusted lease terms and conditions, appellants raise numerous specific objections to the readjustment. The specific objections include: (1) effective date, (2) statutes and regulations, (3) rights of lessee, (4) diligence, (5) bonding, (6) rental, (7) production royalty, (8) advance royalty, (9) exploration plan, (10) authorization of other uses and disposition of leased lands, (11) employment practices, monopoly and fair practices, (12) readjustment of terms and conditions, (13) lessee's liability to lessor, and (14) special stipulations.

or to let the opportunity pass. The scope or nature of the changes is not limited and there exists a very broad power to make changes considered to be in accordance with the proper administration of the lands.

E.g., 30 U.S.C. § 207 (1982); Coastal States Energy Co., 81 IBLA 171, 173 (1984); Gulf Oil Corp., 73 IBLA 328, 330 (1983); Solicitor's Opinion, supra.

The power to readjust extends to every term of the lease. Gulf Oil Corp., supra at 330. The only limitation on this authority is that the Department must notify the lessee of its intent to readjust the lease prior to the end of each 20-year period succeeding the date of the last readjustment, unless otherwise provided by law at the time of the expiration of such period. See Pitkin Iron Corp., 81 IBLA 81, 85 (1984); Kaiser Steel Corp., 76 IBLA 387, 391 (1983); Gulf Oil Corp., supra at 330. By accepting a lease containing the readjustment provision, the lessee has agreed that the Government, upon timely notice of readjustment, may readjust any term of the lease. E.g., 30 U.S.C. § 207(a) (1982); Gulf Oil Corp., supra at 330. Thus, a lessee has no vested right to continued tenure under the original lease conditions. To hold otherwise would totally negate the statutory reservation of the authority to readjust the terms and conditions of the lease. Coastal States Energy Co., 81 IBLA at 173; Gulf Oil Corp., supra at 330-31. "The lessee of a pre-FCLAA lease has no vested rights to the indefinite continuation of existing lease terms, since all terms and conditions were prescribed subject to periodic readjustment." Solicitor's Opinion, supra at 1008 (emphasis in original). In Coastal States Energy Co., 81 IBLA at 174, we stated: "Insofar as a coal lease readjustment is concerned, a lessee has only one existing right: the right to accept or reject the continuation of a coal lease beyond a 20-year period under such reasonable terms as the Secretary deems proper." (Emphasis in original.)

Since the same issues raised by appellants have been addressed in numerous decisions by the Board, we will deal with them summarily with appropriate citations.

[2] The first issue raised by appellants is whether the Secretary is barred by statute and by contractual provisions of the lease from readjusting the lease. Appellants openly admit that the lease "accords the Secretary an option to readjust the Lease at the end of each 20-year period" (Statement of Reasons at 12). Yet, appellants go on to argue that the affording of notice to the lessee of proposed readjusted terms and conditions is insufficient. Appellants argue that the Secretary must actually exercise his "option" to readjust prior to the 20-year anniversary date of the lease. However, this Board has consistently rejected that argument. Where notice of intent to readjust a coal lease is given to a lessee prior to expiration of the 20-year period, such notice satisfies the statutory requirement for readjustment, and BLM may subsequently provide the specific terms or conditions for readjustment. Pitkin Iron Corp., supra at 85; Kaiser Steel Corp., supra at 390-91; Coastal States Energy Co., 70 IBLA 386 (1983), appeal pending, Coastal States Energy Co. v. Watt, C 83-0730J (C.D. Utah filed June 3, 1983); see 43 CFR 3451.1(c)(2); Sunoco Energy Development Co., 84 IBLA 131, 132 (1984).

Appellants also contend that the Secretary is barred by contract from readjusting the lease. In Coastal States Energy Co., 81 IBLA at 173, we held that "BLM may readjust coal leases in conformance with FCLAA and its implementing regulations even when it abrogates existing contractual rights. Moreover, BLM may readjust a coal lease in abrogation of existing contract rights even where it is not pursuant to a statutory or regulatory mandate." See Coastal States Energy Co., 70 IBLA at 394. A lessee has no vested right to the indefinite continuation of existing lease terms. To hold otherwise would negate the statutory right to readjust. Coastal States Energy Co., 81 IBLA at 173; Gulf Oil Corp., *supra* at 330-31.

We therefore conclude that the Secretary is not barred by statute or contract from readjusting appellants' coal lease. Appellants were afforded due notice of the proposed readjustment.

[3] Next appellants argue that the provisions of FCLAA are only prospective in nature. Appellants implicitly assert that FCLAA may not be applied to a pre-FCLAA lease, even upon readjustment of the lease. This Board has specifically addressed and rejected appellants' argument that FCLAA may not be applied to a pre-FCLAA lease. Sunoco Energy Development Co., *supra* at 132-33; Mid-Continent Coal & Coke Co., 83 IBLA 56, 64 (1984); Coastal States Energy Co., 81 IBLA at 173; Kaiser Steel Corp., *supra* at 392. See Solicitor's Opinion, *supra*. In Coastal States Energy Co., 70 IBLA at 390-91, we stated:

That general lease language cannot serve to negate the statutory authority of the Secretary to readjust lease terms and conditions. Regulations in effect at the time of readjustment are applicable to leases subject to readjustment. Coastal would have us believe that only regulations in effect at the time its leases were issued govern the readjustment process. This is clearly incorrect. Just as the statute authorizes readjustment of terms and conditions, so too may the procedures for implementation be adjusted. Those procedures were revised pursuant to FCLAA. We find no ban to applying those regulations to readjustment to Coastal's leases.

Accordingly, we conclude the FCLAA readjustment provisions are applicable to appellants' lease.

Appellants argue that the readjustment of a coal lease constitutes a continuation of the original lease, and that it does not effectuate termination and the issuance of a "new" lease. Appellants submit that the "failure to consider lessee's current contractual rights pursuant to the readjustment process is arbitrary, capricious and abuse of discretion."

The short answer to appellants' argument is that a lessee simply has no vested right to the indefinite continuation of existing lease terms and conditions. To hold otherwise would negate the statutory right to readjustment. Coastal States Energy Co., 81 IBLA at 173; Gulf Oil Corp., *supra* at 330-31. Solicitor's Opinion, *supra*, specifically addresses appellants' contention. Readjustment of a pre-FCLAA lease after the enactment of FCLAA is "like issuance of a new lease, an event which the FCLAA governs. Lease readjustment is like a lease renewal accompanied by a revision of lease

terms." The exercise of an option to "review" a contract for a further term is generally held to produce a new contract. Id. at 1008 (footnote omitted). BLM's readjustment process was in accordance with law and, therefore, was not arbitrary, capricious, and an abuse of discretion.

[4] Appellants object to many of the specific sections of the readjusted lease. Several of these sections are required by regulation. Consistent with the readjustment authority reserved to the United States by statute, the Department may promulgate regulations prescribing new terms and conditions to be included in coal leases upon readjustment. A decision by BLM to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation or where such provisions are in accordance with the proper administration of the public lands. Mid-Continent Coal & Coke Co., 83 IBLA at 59; Mid-Continent Coal & Coke Co., 78 IBLA 178, 180 (1984); Mid-Continent Coal & Coke Co., 76 IBLA 312, 313-14 (1983); Gulf Oil Corp., *supra* at 331; Lone Star Steel Co., 65 IBLA 147, 150 (1982). Therefore, those sections of the lease mandated by statute or regulation must be included in the lease.

We now address appellants' specific objections. Appellants object to the use of the proposed lease form. Appellants submit that "it is patently unjust to impose boilerplate terms and conditions which are otherwise utilized pursuant to the issuance of 'new' Federal coal leases" (Statement of Reasons at 52). However, we find it reasonable and justified for BLM to employ a standard form for coal lease readjustments. The proposed form provides space for the insertion of information which is specifically applicable to the lease in question. For instance, sections 4, 5, and 6 of the lease provide for the insertion of particular bond requirements, rentals, and production royalties. Therefore, appellants' contention is without merit.

Appellants complain that the "effective date" should not be arbitrarily set. Appellants contend that the effective date cannot be set until a final decision has been issued, or until the conclusion of the review process by the Attorney General, or until the completion of appeals pursuant to the readjustment process. This Board has previously rejected a similar complaint concerning the effective date. Sunoco Energy Development Co., *supra* at 133-34; Gulf Oil Corp., *supra* at 334. 43 CFR 3451.2(c) provides in part that "[t]he readjusted lease terms shall become effective either 60 days after the lessee is notified of them, or if the Attorney General desires to review the readjustment 30 days after the authorized officer transmits the required information to the Attorney General, whichever is later."

Appellants complain that the statutes and regulations contained in section 1 of the lease provide that the readjusted lease may be subject to more extensive statutory and regulatory provisions than existed upon issuance. Appellants state that:

[T]his provision [section 1] provides that the Lease rental would be subject not only to all (not necessarily reasonable) regulations of the Secretary which are currently in force, but, also, to all regulations hereafter in force. The effect of this provision is to reduce the Lease to no more than an "agreement to agree" or an "agreement to reagree." [Emphasis in original.]

(Statement of Reasons at 54). This Board has previously approved the use of section 1 and similarly worded provisions which adopt the use of future regulations of coal leases. Sunoco Energy Development Co., *supra* at 135; Mid-Continent Coal & Coke Co., 83 IBLA at 60. In Lone Star Steel Co., 77 IBLA 96, 97-98 (1983), we addressed a similar argument that section 1 of the standard readjusted lease terms required a lessee "to agree in advance to presently unknown terms embodied in future regulations." The Board discussed two independent points in relation to this argument. First, the Board noted that the complaint was largely conjectural and hypothetical since injury to a lessee would be dependent upon the possibility that a regulatory change might be effected which would adversely affect a lessee who had relied on prior regulatory language. Second, by way of dicta, the Board expounded on the reason that the language in section 1 existed:

[T]here are many forms of new, revised or amended regulations which might legitimately be applied to appellant's lease during the future, some of which conceivably could work to the lessee's advantage, or at least not adversely affect it. Regulations can define terms, designate forms, or establish procedures. Other regulations may be necessary to implement new legislation concerning environmental protection, national emergency measures, or matters of health and safety, which could be made obligatory on the lessee in any event. Thus, the language of section 1 is not per se unlawful. Further, when new or revised regulations are promulgated, the Department must adhere to administrative procedures found in 5 U.S.C. § 553 (1976), which afford interested parties the opportunity to become involved in the rulemaking process. If such regulations are applied to the lease and appellant feels that its rights have been adversely affected, it may then have a right to appeal to this Board for relief.

Id. at 97-98. Therefore, we reject appellants' objections to BLM's use of section 1 of the readjusted lease.

Appellants argue that section 2 of the readjusted lease represents a significant change from the original provisions of the lease in that section 2 of the readjusted lease has eliminated their right to manufacture coke or other coal products on the lease premises and their right to use the lands for the housing and welfare of employees. Appellants state that they should be allowed "to maintain all of the rights originally granted to it in its indeterminate term lease" (Statement of Reasons at 56). Appellants' argument is palpably flawed in that they continue to fail to recognize the fundamental readjustment authority expressly contained in the lease. 30 U.S.C. § 207(a) (1982); Rosebud Sales Co. v. Andrus, *supra* at 951; Coastal States Energy Co., 81 IBLA at 173. See discussion *supra* indicating broad adjustment authority.

Appellants complain of section 3 of the readjusted lease which provides for diligent development of readjusted leases. The diligent development requirement is mandated by 43 CFR Subpart 3483. See 43 CFR 3480.0-5(12), (13). Therefore, the diligence requirements must be included in the readjusted lease. Mid-Continent Coal & Coke Co., 83 IBLA at 59; Gulf Oil Corp., *supra* at 331. See discussion *supra*.

Appellants object to the \$10,000 bond required in section 4 of the readjusted lease. See 30 U.S.C. § 187 (1982); 43 CFR Subpart 3474. Neither the statute nor the Departmental regulations provide a specific formula for computing the amount of a bond. However, 43 CFR 3400.0-5(s) provides that a "lease bond," required by 43 CFR 3474.1, shall mean

the bond or equivalent security given the Department to assure payment of all obligations under a lease, exploration license, or license to mine, and to assure that all aspects of the mining operation other than reclamation operations under a permit on a lease are conducted in conformity with the approved mining or exploration plan. [Emphasis added.]

Appellants have provided no evidence that the amount of the bond set in the present case was more than is required to accomplish these regulatory purposes. See Cambridge Mining Co., 74 IBLA 26 (1983).

Appellants contend that the \$ 10,000 bond requirement is "inordinate" (Statement of Reasons at 59). Appellants argue that in the absence of regulations setting out standards for setting bonds in coal leasing, the bonding requirement in this case is imposed arbitrarily, capriciously, and abuses the discretion of the Secretary. This argument might be more persuasive if there had been an increase in the amount of bond following readjustment. However, the bond requirement was not increased upon readjustment. Therefore, it is extremely difficult to conclude that the bond requirement has now become "inordinate." See Sunoco Energy Development Co., *supra* at 135. While the regulatory standards setting bond requirements could provide more detail; nonetheless, there is some standard. *Id.* BLM properly determined the amount of lease bond.

Appellants object to section 5 of the readjusted lease which imposes a rental of \$ 3 per acre and provides that rental may not be credited against royalties. Section 5 is specifically mandated by 43 CFR 3473.3-1(a), which provides that "[t]he annual rental per acre or fraction thereof on any lease issued or readjusted after the promulgation of this subpart shall not be less than \$3." See Coastal States Energy Co., 81 IBLA at 175. BLM correctly stated in its decision that there is no longer authority allowing rentals to be credited against royalties since FCLAA deleted the applicable authorization from the former section 7 of the Mineral Leasing Act. *See* 47 FR 33131 (July 30, 1982); 43 CFR 3473.3-1(c). BLM properly imposed the \$3 per acre annual rental.

Appellants object to section 6 of the readjusted lease which provides for a production royalty of 12-1/2 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of coal produced by underground methods. Appellants contend, based on their earlier argument that FCLAA does not apply to pre-FCLAA leases, that the 12-1/2 percent and 8 percent rates do not apply to their lease, and that the royalty rates are arbitrary, capricious, and an abuse of discretion. 43 CFR 3473.3-2(a)(2) provides that "[a] lease shall require payment of a royalty of not less than 12-1/2 percent of the value of the coal removed from a surface mine." *See* 30 U.S.C. § 207(a) (1982). 43 CFR 3473.3-2(a)(3) provides: "A lease shall require payment of a royalty of not less than 8 percent of the value of the

coal removed from an underground mine, except that the Minerals Management Service may determine a lesser amount, but in no case less than 5 percent if conditions warrant." See Coastal States Energy Co., 81 IBLA at 179. 43 CFR 3451.1(a)(2) provides that "[a]ny lease subject to readjustment which contains a royalty rate less than the minimum royalty prescribed in § 3473.3-2 of this title shall be readjusted to conform to the minimum prescribed in that section." In Blackhawk Coal Co., 68 IBLA 96 (1982), the production royalty provision was defined to mean that, at the time of readjustment, the royalty rate for underground coal was to be set at 8 percent subject to temporary reduction at any time later upon a satisfactory showing to justify the lower rate. The Blackhawk decision explains at page 99:

Appellant contends that it is arbitrary and capricious to designate a royalty rate by regulation without assessing a company's economic capability to support such a rate. Appellant points to 43 CFR 3473.3-2(a)(1) which states that royalty rates shall be determined on an individual case basis prior to lease issuance, citing Rosebud Coal Sales Co. v. Andrus, No. C79-160B, slip op. at 15-16 (D. Wyo. 1980), aff'd, 667 F.2d 949 (10th Cir. 1982). Appellant contends that in proposing the 8 percent production royalty, the Department has given no consideration to variations in mining conditions, geography, labor markets, or transportation.

* * * Departmental regulation 43 CFR 3473.3-2 provides two ways of granting underground coal lessees relief from the statutory 12-1/2 percent royalty. Subsections (a)(1) and (a)(3) implement 30 U.S.C. § 207(a) (1976), and provide that a rate as low as 5 percent may be determined at lease issuance. Alternatively, the Department may establish a royalty rate in the lease and provide relief after lease issuance upon application of the lessee under subsection (d), which implements 30 U.S.C. § 209 (1976). Appellant has not persuaded us that it is unreasonable to establish an 8 percent royalty rate in the lease now, since the rate may temporarily be reduced later if conditions warrant. If a lower rate is put into the lease now and economic conditions change favorably during the term of the lease, there will be no opportunity for upward adjustment of the royalty figure until the lease is again ripe for readjustment. The method chosen by BLM thus assures the United States a fairer return over the life of lease, provides appellant some relief from statutory 12-1/2 percent rate, yet affords appellant an opportunity for further royalty relief when it is really needed. We previously have affirmed BLM decisions denying special royalty relief at lease readjustment, requiring lessees to seek such relief under 43 CFR 3473.3-2(d). Lone Star Steel Co., 65 IBLA 147 (1982); Garland Coal & Mining Co., 49 IBLA 400 (1980).

See FMC Corp., 74 IBLA 389 (1983). ^{4/} BLM properly imposed the royalty provisions mandated by regulation.

^{4/} This Board decision was reversed by the United States District Court for Wyoming in FMC Wyoming Corp. v. Watt, C83-347-K (June 28, 1984), in which

Appellants complain of sections 7 (advance royalty), 9 (exploration plan), 10 (mining plan), 11 (logical mining units), 14 (authorization of other uses and disposition of leased lands), 17 (employment practices), 18 (monopoly and fair practices), and 26 (lessee's liability to lessor). Appellants repeatedly assert that these provisions somehow violate their contractual rights and are arbitrary and capricious. As we have stated, a lessee has no vested rights to the indefinite continuation of existing lease terms. E.g., Coastal States Energy Co., 81 IBLA at 173. Appellants simply have no such contract rights, nor are the provisions arbitrary and capricious.

Finally, appellants object to the special stipulations contained in section 30 of the readjusted lease. There are four special stipulations. They are lettered (a) through (d). Special stipulation (a) relates to cultural resources and (b) to paleontological resources. Special stipulation (c) subjects the lease to unsuitability determinations under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1281 (1982). The final special stipulation requires compliance with the "Wildlife Mitigation Management Plan" attached as exhibit A to the lease.

First, appellants object generally that these stipulations represent new lease terms and are not properly the subject of readjustment. We have dealt with this argument as it related to other readjustment terms. It has no merit. Regarding special stipulation (a), appellants object to the use of the terms "mine plan area" and "exploration plan area" as being overly broad. They argue that any cultural resource intensive field inventory should be limited to those areas of the lease which will be the subject of surface disturbance. The requirement for a survey, however, is limited by the stipulation to those portions of such areas adversely affected by lease-related activities. Such a limitation appears reasonable. Any question relating to particular areas covered by the stipulation should be addressed to BLM.

Appellants argue with respect to special stipulation (b) that BLM should specify therein a timeframe with respect to how long an operator would have to suspend operations awaiting Government removal of a significant fossil. The stipulation at subsection (3) requires that the lessee bring to the attention of the Government any larger and more conspicuous fossils that might be altered or destroyed by its operation. The lessee may continue to operate as long as the fossils "would not be seriously damaged or destroyed by the activity." The Government is required to evaluate such discoveries and within 5 working days notify the lessee of "what action shall be taken with respect

fn. 4 (continued)

the court held with regard to surface mining operations that the Department could not apply the statutory mandated rate of 12-1/2 percent to all leases subject to readjustment, rather the royalty rate should be determined on a case-by-case basis with regard for the circumstances of each lease. The Department has sought review of that determination. FMC Wyoming Corp. v. Clark, No. 84-2175 (10th Cir. filed Aug. 29, 1984). Under the circumstances we decline to apply the Wyoming District Court's decision to this case arising in Montana. See Mid-Continent Coal & Coke Co., 83 IBLA at 64.

to such discoveries." The cost of any required salvage is to be borne by the United States.

We cannot find that appellants' proposed solution of enunciating a specific timeframe is appropriate. Clearly, imposing a specific time limitation in the stipulation would not be feasible, since removal would have to depend on a number of circumstances which would, necessarily, be site specific. It is implicit from the language of the stipulation that the Government will conduct any removal operation within a reasonable time.

Special stipulation (c), appellants contend, is unnecessary and inappropriate because it "is merely a reiteration of existing statutes and regulations" (Statement of Reasons at 84). We find appellants' objection to be baseless. The stipulation specifically identifies the lease as being subject to a possible unsuitability designation.

Appellants register strong objection to special stipulation (d) complaining that it should not constitute a "new" lease term but should be reserved for the permitting process. They argue that operational realities will require modifications and continual updating of the plan. The record shows that the mitigation plan was developed by Consol. A stipulation to insure compliance with the plan is reasonable. We find no merit to appellants' objection to this stipulation.

To the extent appellants have raised arguments which we have not specifically addressed herein, they have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Gail M. Frazier
Administrative Judge.

